

THIS DISPOSITION IS  
NOT CITABLE AS PRECEDENT  
OF THE TTAB

Mailed: July 2, 2004

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Baldwin Piano, Inc., assignee of Gibson Piano  
Ventures, Inc.

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Serial No. 76411171

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Lucian Wayne Beavers of Waddey & Patterson, P.C. for  
applicant.

Khanh M. Le, Trademark Examining Attorney, Law Office 113  
(Odette Bonnet, Managing Attorney).

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Before Simms, Chapman and Holtzman, Administrative  
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On May 20, 2002 Gibson Piano Ventures, Inc. filed an  
application to register the mark BREWSTER on the Principal  
Register for "pianos" in International Class 15, based on  
applicant's assertion of a bona fide intention to use the  
mark in commerce. The records of the Assignment Branch of  
the USPTO indicate that in November 2002 this application

was assigned to Baldwin Piano, Inc. (a Delaware corporation). See Reel 2610, Frame 0594.

Registration has been finally refused under Section 2(e)(4) of the Trademark Act, 15 U.S.C. §1052(e)(4), on the basis that the term BREWSTER is primarily merely a surname.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs. No oral hearing was requested by applicant.

The Examining Attorney contends that the primary significance of the term BREWSTER to the purchasing public is that of a surname as evidenced by (i) the 7,580 "residential listing(s)" of persons with that surname found on the PowerFinder (formerly known as PhoneDisc) database, (ii) several excerpted stories retrieved from the Nexis database (nine out of 62,169 stories), all nine stories indicating uses of a first name with the surname BREWSTER, and (iii) a photocopy of the relevant page from the Merriam-Webster's Collegiate Dictionary (Tenth Edition 1998) showing no listing of the word "BREWSTER"; that BREWSTER has no other meaning than as a surname; that this is not a rare surname with over 7,500 residential listings of the surname; that applicant's argument that the term "identifies a historical brand of pianos" (applicant's brief, p. 5) is not particularly relevant because

applicant's evidence thereon shows only that there was prior use of the term BREWSTER as a brand name for pianos from 1900 - 1933, but there is no evidence that the term refers to any particular historical person.

Applicant contends that (i) the Examining Attorney has not met the burden of establishing a prima facie case that BREWSTER is primarily merely a surname; and (ii) "the mark has some historical significance, i.e., it identifies a vintage piano brand, such that the long and extensive use of the mark by Applicant's predecessor-in-interest has changed its significance to the public from that of a surname (albeit a rare one) to that of a mark for pianos." (Applicant's brief, p. 2.) In support of the latter argument, applicant submitted a photocopy of a page from the Pierce Piano Atlas (10th Edition) showing "BREWSTER, East Rochester, NY. Later became a division of American Piano Co. and then Aeolian-American" followed by columns of most of the years 1900 through 1933 with a five or a six digit number behind each listed year.<sup>1</sup>

It is well established that the USPTO has the burden of establishing a prima facie case that a mark is primarily

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<sup>1</sup> Applicant also referred to an expired registration (Reg. No. 688318) assertedly for the mark BREWSTER for pianos, but applicant did not make a photocopy of the registration of record. Even if the expired registration had been made of record, it is not evidence of use of the mark.

merely a surname, and that the test for determining whether a mark is primarily merely a surname is the primary significance of the mark to the purchasing public. See *In re BDH Two Inc.*, 26 USPQ2d 1556 (TTAB 1993), and cases cited therein. We are of the opinion that the Examining Attorney has met that burden here, and that applicant's arguments have failed to rebut the USPTO's prima facie case.

The Examining Attorney's search of the PowerFinder database shows 7,580 residential listings of "BREWSTER" (with a printout of the first 100 individuals listed), and her search of the Nexis database shows 62,169 stories (nine of which were printed out as samples of these stories, all referring to individual people whose surname is "Brewster"). The PowerFinder and the Nexis evidence all include references to individuals named BREWSTER from all geographic areas of the United States. The evidence clearly establishes that the term BREWSTER is a surname. Applicant's assertion that BREWSTER is a rare surname is simply not well taken. Moreover, the Examining Attorney submitted the relevant page from a dictionary to indicate that the word "BREWSTER" is not listed therein to establish that it has no other meanings. Based on the evidence, we find that the Examining Attorney has met the burden of

establishing a prima facie case that the term BREWSTER is primarily merely a surname.

Applicant acknowledges that "although BREWSTER does have surname significance,..." applicant contends that in the context of pianos, "it is also known as a historical brand for pianos." (Applicant's response filed March 4, 2003, p. 1.) From this applicant concludes that the term BREWSTER signifies a historical person, and therefore it is not primarily merely a surname, citing cases such as *Lucien Piccard Watch Corp. v. Since 1868 Crescent Corp.*, 314 F.Supp. 329, 165 USPQ 459 (SDNY 1970) (DA VINCI held not primarily merely a surname as its primary connotation is with the world famous historical figure Leonardo Da Vinci); and *In re Pyro-Spectaculars Inc.*, 63 USPQ2d 2022 (TTAB 2002) (SOUSA held not primarily merely a surname as it connotes the historical band leader and composer John Philip Sousa).

Applicant's evidence from the Pierce Piano Atlas at best shows that at one time BREWSTER was used as a brand name for pianos. The record is devoid of evidence that the name BREWSTER identifies a historical person. Certainly, there is no evidence establishing that a person named BREWSTER is a historical or even semi-historical figure so widely recognized as to be almost exclusively associated

**Ser. No. 76411171**

with the historical figure. See *In re Pickett Hotel Co.*,  
229 USPQ 760 (TTAB 1986), and cases cited therein.

**Decision:** The refusal to register under Section  
2(e)(4) of the Trademark Act is affirmed.